



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0187; FRL-9945-96-Region 9]**

#### **Limited Disapproval of Air Plan Revisions; Arizona; New Source Review; PM<sub>2.5</sub>**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited disapproval of a revision to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) under the Clean Air Act (CAA or Act). This ADEQ-submitted SIP revision primarily was intended to serve as a replacement of ADEQ's SIP-approved rules for the issuance of New Source Review (NSR) permits for stationary sources, including but not limited to the rules governing the review and permitting of major sources and major modifications under the Act. This action concerns only the major nonattainment NSR provisions in ADEQ's submittal as they pertain to the Nogales and West Central Pinal nonattainment areas for particulate matter with a diameter of 2.5 micrometers or less (PM<sub>2.5</sub>). The EPA previously finalized a limited approval for these PM<sub>2.5</sub> nonattainment areas related to certain major nonattainment NSR permitting requirements for PM<sub>2.5</sub> under the CAA, and is now also proposing a limited disapproval to set the stage for remedying certain deficiencies related to these requirements.

**DATES:** Comments must arrive by **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-R09-OAR-2015-0187** at <http://www.regulations.gov>, or via email to [R9AirPermits@epa.gov](mailto:R9AirPermits@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

## Table of Contents

### I. The State’s Submittal

- A. What did the State submit?
- B. What is the purpose of this proposed rule?

## II. The EPA's Evaluation and Action

- A. How is the EPA evaluating the submittal?
- B. Does the submittal meet the evaluation criteria?
- C. Proposed action and public comment

## III. Statutory and Executive Order Reviews

### **I. The State's Submittal**

- A. *What did the State submit?*

On July 28, 2011 and October 29, 2012, ADEQ submitted revisions to the ADEQ portion of the Arizona SIP for EPA approval under the CAA. On May 16, 2014, ADEQ supplemented the July 28, 2011 submittal. On September 6, 2013, July 2, 2014, and February 16, 2015, ADEQ supplemented the October 29, 2012 submittal. Collectively, these submittals generally comprise ADEQ's current program for preconstruction review and permitting of new or modified stationary sources under ADEQ's jurisdiction in Arizona. On November 2, 2015, the EPA finalized a limited approval and limited disapproval, and other actions, for these submittals. See our final rule at 80 FR 67319 (Nov. 2, 2015) and proposed rule at 80 FR 14044 (Mar. 18, 2015). The EPA is now taking further action related to these submittals. The specific rules that were reviewed as part of these submittals and our previous action, and which are the subject of this action, can be found in Table 1 of the preamble to our November 2, 2015 final rule (80 FR 67320).

The SIP submittals that are the subject of this action and our 2015 proposed and final rules, referred to herein as the “NSR SIP submittal,” represent a comprehensive revision to ADEQ’s preconstruction review and permitting program and were intended to satisfy the requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act for major sources as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act. The Act’s preconstruction review and permitting programs are often collectively referred to as “New Source Review”.

Please see our previous proposed and final actions for the NSR SIP submittal – Revisions to Air Plan; Arizona; Stationary Sources; New Source Review – for a detailed description of the actions taken to date related to these submittals, including the docket for these actions (Docket ID No. EPA-R09-OAR-2015-0187 at [www.regulations.gov](http://www.regulations.gov)) where other supplementary materials are available.

On December 28, 2012, April 29, 2013, and December 2, 2014, ADEQ’s July 28, 2011, October 29, 2012, and July 2, 2014 submittals, respectively, were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the relevant ADEQ regulations.

*B. What is the purpose of this proposed rule?*

The purpose of this EPA rulemaking is solicit comment on whether the major nonattainment NSR portion of ADEQ’s NSR SIP submittal fully meets the permitting requirements for PM<sub>2.5</sub> precursors under section 189(e) of the CAA. In the EPA’s March 2015

proposed action on ADEQ's NSR SIP Submittal, we explained that we were not evaluating at that time whether the NSR SIP submittal would require additional revisions related to PM<sub>2.5</sub> to satisfy CAA section 189(e) requirements, and we finalized our action accordingly in November 2015. We are now proposing a limited disapproval of the major nonattainment NSR portion of ADEQ's NSR SIP submittal for PM<sub>2.5</sub> as it pertains to the statutory requirements of section 189(e).

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the submittal?*

At this time the EPA is evaluating whether ADEQ's NSR SIP submittal meets certain permitting requirements for PM<sub>2.5</sub> nonattainment areas under title I, part D, subpart 4 of the CAA (subpart 4). At the time of our 2015 action, we did not determine that the submittal fully addressed section 189(e) in subpart 4, related to NSR permitting requirements for PM<sub>2.5</sub> for major stationary sources in PM<sub>2.5</sub> nonattainment areas, and instead finalized a limited approval related to subpart 4 based on this issue. For PM<sub>2.5</sub> nonattainment areas, section 189(e) requires that the control requirements applicable under plans in effect under part D of the CAA for major stationary sources of PM<sub>2.5</sub> also apply to major stationary sources of PM<sub>2.5</sub> precursors, except where the Administrator determines that such sources do not contribute significantly to PM<sub>2.5</sub> levels which exceed the standards in the area.

### *B. Does the submittal meet the evaluation criteria?*

As explained further below, in order to meet the evaluation criteria in CAA section 189(e) for PM<sub>2.5</sub> as discussed above, ADEQ's NSR SIP submittal would need to (1) require

major stationary sources of PM<sub>2.5</sub> precursors (nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), volatile organic compounds (VOC), and ammonia) in areas designated nonattainment for the PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) to meet the same control requirements as those applicable to major stationary sources of PM<sub>2.5</sub>, or (2) if not including such requirements for any of these precursors, provide a demonstration that the particular precursor does not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the relevant PM<sub>2.5</sub> nonattainment area. As explained in our March 2015 proposed action on the ADEQ NSR SIP submittal, the rules in that submittal regulate NO<sub>x</sub> and SO<sub>2</sub> as PM<sub>2.5</sub> precursors (see 80 FR 14057). As a result, the only remaining element for evaluation is whether the submittal appropriately addresses VOC and ammonia as PM<sub>2.5</sub> precursors.

#### *1. Background*

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council (NRDC) v. EPA*, issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. See 706 F.3d 428 (D.C. Cir. 2013). The 2008 EPA implementation rule addressed by the court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)" (the 2008 NSR PM<sub>2.5</sub> Rule)<sup>1</sup>, promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (under the nonattainment NSR program) and attainment/unclassifiable areas (under the PSD program). The Court of Appeals found that the EPA had erred in implementing the PM<sub>2.5</sub> NAAQS in these rules for nonattainment areas solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the

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<sup>1</sup> 73 FR 28321 (May 16, 2008).

additional implementation provisions specific to particulate matter nonattainment areas in subpart 4 of part D of title I. The Court of Appeals ordered the EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” 706 F.3d at 437. The EPA issued a proposed rule to promulgate new generally applicable implementation regulations for the PM<sub>2.5</sub> NAAQS in accordance with the requirements of subpart 4 and the Court’s remand decision, see 80 FR 15340 (March 23, 2015), but the EPA has not yet issued the final implementation rule. In the interim, however, states and the EPA still need to proceed with implementation of the PM<sub>2.5</sub> NAAQS in a timely and effective fashion in order to meet statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS.

## *2. ADEQ’s NSR SIP Submittal for PM<sub>2.5</sub> Nonattainment Areas*

ADEQ’s NSR SIP submittal generally includes requirements for the PM<sub>2.5</sub> nonattainment NSR program for major sources consistent with the provisions promulgated in the EPA’s 2008 NSR PM<sub>2.5</sub> Rule. Specifically, ADEQ’s NSR SIP submittal includes the PM<sub>2.5</sub> significant emission rates at R18-2-101(130), regulation of certain PM<sub>2.5</sub> precursors (SO<sub>2</sub> and NO<sub>x</sub>) at R18-2-101(130), the regulation of PM<sub>10</sub> and PM<sub>2.5</sub> condensable emissions at R18-2-101(122)(f), and the emissions offset requirements at R18-2-403(A)(3). The EPA approved these provisions into ADEQ’s SIP as part of a limited approval and limited disapproval, and other actions, on November 2, 2015 (80 FR 67319).

Although ADEQ’s NSR SIP submittal does include regulation of major sources of SO<sub>2</sub> and NO<sub>x</sub> as PM<sub>2.5</sub> precursors under the major source nonattainment NSR program, it does not include rules regulating VOCs or ammonia in this manner. Nor does the NSR SIP submittal include a demonstration showing that the regulation of VOCs and ammonia is not necessary

under section 189(e).

The evaluation of which precursors need to be controlled to achieve a NAAQS in a particular nonattainment area is typically conducted in the context of the state's preparing and the EPA's reviewing an area's attainment plan SIP. In this case, there are two designated PM<sub>2.5</sub> nonattainment areas in Arizona, the Nogales (portion of Santa Cruz County, AZ) and West Central Pinal (portion of Pinal County, AZ) areas. Both are designated nonattainment for the 2006 annual PM<sub>2.5</sub> NAAQS. However, on January 7, 2013 and September 4, 2013, the EPA finalized determinations of attainment for these areas, respectively (78 FR 887 and 78 FR 54394), which suspended the requirement for the state to submit, among other things, an attainment plan SIP for the areas.<sup>2</sup> Accordingly, PM<sub>2.5</sub> attainment plans for SIP approval are not before EPA Region 9 for these areas, nor were they at the time of the EPA's proposed or final 2015 actions on the NSR SIP submittal. In 2015, as the EPA did not have before it the state's analysis as to which precursors needed to be controlled in these areas pursuant to section 189(e) of the Act, we determined that we could not fully approve as complying with the Act a nonattainment NSR SIP that addressed only a subset of the scientific PM<sub>2.5</sub> precursors recognized by the EPA. We determined that while ADEQ's NSR SIP submittal may not contain all of the elements necessary to satisfy the CAA requirements when evaluated under subpart 4, the major source nonattainment NSR portion of the submittal represented a considerable strengthening of the previously approved Arizona SIP, which did not previously address NSR permitting for PM<sub>2.5</sub> at all. Therefore, in our 2015 action, the EPA granted limited approval to

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<sup>2</sup> Prior to the *NRDC* Court's decision, the EPA would not have reviewed PM<sub>2.5</sub> attainment plan submittals for compliance with Section 189.



the PM<sub>2.5</sub> major nonattainment NSR provisions in ADEQ's NSR SIP submittal for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas based on the subpart 4 requirements, and indicated that we would consider whether a limited disapproval was appropriate pertaining to these requirements when the EPA re-promulgated its PM<sub>2.5</sub> regulations with respect to major nonattainment NSR permitting in response to the Court of Appeals' remand decision in the *NRDC* case.

Although the EPA has not yet re-promulgated these PM<sub>2.5</sub> regulations in response to the remand decision, the EPA is now proposing to determine that ADEQ's NSR SIP submittal does not fully satisfy the major nonattainment NSR requirements for PM<sub>2.5</sub> under section 189(e) of the Act for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas, based on our finding that the submittal does not include rules regulating VOCs or ammonia as PM<sub>2.5</sub> precursors under the major source nonattainment NSR program, nor does it include a demonstration showing that the regulation of VOCs and ammonia is not necessary under section 189(e). We find it is appropriate to take action now in order to proceed with implementation of the major source nonattainment NSR program for the PM<sub>2.5</sub> NAAQS in a timely and effective fashion to address statutory obligations under the CAA and to assure the protection of public health as intended by the Act based on those NAAQS. Therefore, we are proposing a limited disapproval of the major source nonattainment NSR provisions in ADEQ's NSR SIP submittal for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas based on our finding that the submittal does not fully satisfy section 189(e) of the Act as it relates to PM<sub>2.5</sub> precursors. To address this limited disapproval, ADEQ must revise its major source nonattainment NSR permitting program to include VOC and ammonia as PM<sub>2.5</sub> precursors, or provide a demonstration satisfying the requirement in section

189(e) that a particular precursor does not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the Nogales and/or West Central Pinal PM<sub>2.5</sub> nonattainment areas.

*C. Proposed action and public comment*

Pursuant to Section 110(k) of the Act, and for the reasons provided above, we are proposing a limited disapproval of the major source nonattainment NSR provisions of ADEQ's NSR SIP submittal for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas under section 189(e) of the Act related to PM<sub>2.5</sub> precursors. The EPA is proposing this action because, although we found that the NSR SIP submittal met most of the applicable NSR permitting requirements for PM<sub>2.5</sub> nonattainment areas, we have found certain deficiencies that prevent full approval. The intended effect of our limited disapproval action is to set the stage for remedying deficiencies in these regulations in a timely fashion.

If finalized as proposed, our limited disapproval action will trigger an obligation on the EPA to promulgate a Federal Implementation Plan unless Arizona corrects the deficiencies that are the bases for this limited disapproval, and the EPA approves the related plan revisions, within two years of the final action. Additionally, the offset sanction in CAA section 179(b)(2) would apply in the nonattainment areas at issue 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in these areas six months after the offset sanction is imposed. However, neither sanction will be imposed under the CAA if Arizona submits, and we approve, prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in a final action. The EPA is working with ADEQ to correct the deficiencies identified in this action in a timely manner.

We will accept comments from the public on the proposed disapproval for the next 30

days.

### **III. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at

<http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

#### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

Dated: April 21, 2016.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

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